

**761—20.8(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services.** This rule prescribes procedures for the procurement of architectural, landscape architectural, engineering and related professional and technical services by negotiation.

**20.8(1) Prequalification.**

*a. General information.*

(1) When procuring any of these services, the department shall consider for contract award only those firms that are prequalified with the department in the category of work to be contracted.

(2) Prequalification of subconsultants is also required if a work category exists for the services to be provided by the subconsultant. If no category exists, normal methods of acceptance shall be used such as experience, typical licensure, certification or registration, or seals of approval by others. A subconsultant is a firm contracted to the “prime” firm for the performance of work contracted by the department to the prime firm.

(3) When another party (e.g., a political subdivision), under agreement with the department or as prescribed by law, must obtain the department’s approval of a contract between the party and a firm for provision of any of these services, the firm to be awarded the contract must be prequalified with the department in the category of work to be contracted.

*b. Web site.* Application forms, descriptions of the categories of work for which firms may be prequalified, the minimum qualification standards for each work category, and a list of firms prequalified in each work category are available on-line on the department’s Web site. The home page is [www.dot.state.ia.us](http://www.dot.state.ia.us). Prequalification information is found by clicking on the link “Doing Business with the DOT” and then the link “Professional and Technical Consultant Utilization.”

*c. Consultant coordinator.* Information regarding prequalification is also available from the Consultant Coordinator, Engineering Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

*d. Application forms.* A firm wishing to prequalify with the department in one or more categories of work must submit Forms 102111 and 102113. An applicant firm may either submit the forms on-line or complete hard copies of the forms and mail them to the consultant coordinator. On-line submission is encouraged.

(1) On Form 102111, the applicant firm shall provide general information regarding the firm.

(2) On Form 102113, the applicant firm shall provide detailed information regarding the firm’s qualifications to perform a specific category of work. A separate Form 102113 must be submitted for each category. The firm shall support its application for prequalification for a particular category of work on the basis of adequacy and expertise of personnel, specialized experience in the field or fields required, performance records, and the minimum qualification standards set forth for the category.

(3) The department does not recognize joint ventures for the purpose of prequalification. Each firm will be prequalified in terms of its own capabilities; i.e., the major, significant aspects of the work can be accomplished using the firm’s own personnel and equipment.

This requirement does not preclude consideration during the department’s selection process of joint ventures or firms in the practice of subcontracting for specialized services.

*e. Initial prequalification.*

(1) A firm may apply for prequalification at any time.

(2) The department shall evaluate each Form 102113 submitted in terms of the minimum qualification standards for the work category and, if applicable, the past performance of the firm on contracts with the department for work falling within the category.

(3) If the department prequalifies a firm for a particular category of work, the department will update its Web site to indicate the firm is prequalified for that category. If prequalification is denied, the department shall notify the firm; see paragraph “h” of this subrule.

(4) A firm’s prequalification status for all approved categories of work is effective during the calendar year of application and for one year thereafter, to expire on December 31.

*f. Reapplication and renewal.* At least two months but not more than three months prior to the expiration date, the department shall advise affected prequalified firms to reapply. A firm that

reapplies on-line need only revise its on-line forms. A firm that does not reapply on-line must submit new Forms 102111 and 102113. The department shall process reapplications in the same manner as initial prequalification. A firm's renewal of prequalification is effective for two more years, to expire on December 31.

*g. Amendment or expansion of prequalification.* A prequalified firm may submit amended prequalification forms or apply for prequalification for additional categories of work at any time.

(1) Amended forms shall be accompanied by a separate statement explaining the submission. The firm must first contact the consultant coordinator for instructions on how to proceed.

(2) If the submission affects the minimum qualification standards or if it is an application for prequalification for an additional category of work, the department shall process the submission in the same manner as initial prequalification. However, the prequalification expiration date assigned to the firm will remain the same.

*h. Denial or cancellation of prequalification.* Prequalification may be denied or canceled if the firm fails to meet the minimum qualification standards or if the firm's performance on a contract with the department was unacceptable. Prequalification may also be denied or canceled for good cause including, but not limited to, omissions or misstatements of material fact on the application forms that could affect the prequalification status of the firm.

The department shall notify the firm by E-mail or in writing of denial or cancellation, the reason(s) therefor, and the person to contact in writing to protest the department's action.

**20.8(2) and 20.8(3) Reserved.**

**20.8(4) Preselection.** Prior to selecting a firm with which to initiate negotiations under this rule, the department shall document the need for outside services, a description of the needed services, the time frame within which the work must be performed, and the method of selection to be used. One of the following methods shall be used to select a firm with which to initiate negotiations:

*a. Selection committee—complete process.* See subrule 20.8(5).

*b. Selection committee—small contract process.* See subrule 20.8(6).

*c. Sole source or emergency selection.* See subrule 20.8(7).

**20.8(5) Selection committee—complete process.** This method of selection is used unless another selection method is justified.

*a. Selection committee.* The department shall appoint a selection committee to:

(1) Review the credentials of the firms prequalified to perform the services needed.

(2) Determine which firms will be sent a request for proposals (RFP). The committee may limit the number of firms sent an RFP to eliminate the effort required by a firm that submits a proposal for the work but, based on the evaluation criteria, would have a limited possibility of being selected.

(3) Establish weighted criteria for evaluating the firms submitting proposals. See paragraph "b" of this subrule.

(4) Prepare an RFP and send it to the firms identified in subparagraph (2). The department shall also notify all prequalified firms that an RFP has been issued and post the RFP on the department's Web site.

(5) If necessary, interview firms submitting proposals.

(6) Evaluate the firms submitting proposals. Select the top (three or more) firms.

(7) Document the committee's decision-making process.

*b. Evaluation criteria.* The selection committee is responsible for establishing criteria for evaluating each firm submitting a proposal, assigning weighted values to the criteria, and rating each firm on each criterion. Evaluation criteria are tailored to the needed services. Typical evaluation criteria are listed below. The list is not exhaustive, nor is each criterion mandatory.

(1) Staffing expertise consistent with special project needs.

(2) Past experience with similar types of work.

(3) Performance evaluations by the department and references included in a firm's proposal.

(4) Proximity to the project area, particularly when extensive field services are required.

(5) Current workload and commitment of key personnel.

(6) Specific qualifications of key staff who will be forming the firm's project team.

(7) Resources the firm has available and proposes to use on the project, including the firm's use of equipment and automated technology and their compatibility with equipment and technology used by the department.

(8) Identification of proposed subconsultants and the work they will perform.

c. *Consultant steering committee.* A consultant steering committee is responsible for reviewing the top firms selected by the selection committee, determining the order of preference for negotiations, and documenting its decision-making process. The consultant steering committee shall consider not only the selection committee's scoring but other factors such as:

(1) A firm's ability to complete required tasks in the time allotted, taking into account other work currently under contract.

(2) The volume of work a firm has with the department, both existing and potential.

(3) The department's goal of having a breadth of experienced firms capable of providing quality services to the department.

(4) Other items unique to the particular contract.

d. *Completion of selection process.* After selection committee and consultant steering committee activities are complete, the department shall determine whether negotiations may begin. If negotiations are approved, the department shall proceed to negotiate with the firm that is first in order of preference.

e. *Notification to firms.* The department shall notify those firms submitting proposals of the names of the top firms selected and the order of negotiations. Along with the notification, the department shall provide each firm other than the top firms a matrix showing the high, low and average scores for each item evaluated and that firm's score for each item.

**20.8(6) Selection committee—small contract process.** The small contract process may be used to identify a single firm with which to negotiate when the estimated work under the contract can normally be completed within a 12-month period and the estimated cost of the contract will not exceed \$100,000.

a. *Selection committee.* The department shall appoint a selection committee to:

(1) Review the credentials of the firms prequalified to perform the services needed.

(2) If necessary, interview firms.

(3) Select a well-qualified firm with which to initiate negotiations.

(4) Document the committee's decision-making process.

b. *Completion of selection process.* After selection committee activities are complete, the department shall determine whether negotiations may begin. If negotiations are approved, the department shall proceed to negotiate with the selected firm.

**20.8(7) Sole source or emergency selection.** The department shall fully document and include in the contract file the justification for use of sole source or emergency selection and the basis on which a particular firm is selected.

a. *Sole source selection.* The department may select a single prequalified firm with which to negotiate when one of the following conditions exists:

(1) Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more qualified than other firms.

(2) The services involve work that is of such a specialized character or related to a specific geographical location that only a single firm, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.

b. *Emergency selection.* The department may select a single prequalified firm with which to negotiate when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:

(1) A condition that threatens the public health, welfare or safety.

(2) A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

(3) A situation in which the department must act to preserve critical services or programs.

**20.8(8) Negotiation of contract.** The purpose of negotiations is to develop a contract mutually satisfactory to the department and the selected firm.

*a.* The firm must submit a detailed cost proposal, including a detailed cost proposal for each proposed subcontract. The department shall prepare an independent estimate of the cost of the proposed services, including a detailed estimate of the firm's staff hours needed to complete the contract. Significant differences shall be evaluated and resolved to the satisfaction of both parties. If it is impractical to make an independent estimate, the department shall evaluate the acceptability of the firm's cost proposal on the basis of the reasonableness of the individual elements of the price proposed.

*b.* The department may perform a preaudit. A preaudit typically includes:

(1) An analysis of the firm's cost proposal and financial records for the method of accounting in place to ensure that the firm has the ability to adequately segregate and accumulate reasonable and allowable costs to be charged against the contract.

(2) An analysis of the firm's proposed direct costing rates and indirect overhead factors to ensure their propriety and allowability.

**20.8(9) *Unsuccessful negotiations.*** If a mutually satisfactory contract cannot be negotiated, the department shall formally terminate the negotiations and notify the firm in writing. Termination of negotiations is without prejudice. The substance of terminated negotiations is confidential.

When a selection committee was used, the department shall then initiate negotiations with the firm given second preference, and this procedure shall be continued until a mutually satisfactory contract has been negotiated. If a satisfactory contract cannot be negotiated with any of the selected firms, the department shall either:

*a.* Direct the selection committee to select one or more firms with which to continue negotiations, or

*b.* Redefine the scope of the project or work and start over (preselection).

**20.8(10) *Evaluation of performance under a contract.***

*a.* The department shall evaluate all contracts under this rule after completion of the work. Those contracts which exceed one year in duration shall also be evaluated annually. Both the firm's performance and quality of the final product shall be evaluated. The evaluation shall consider:

(1) The quality and adequacy of work performed.

(2) The ability to meet established schedules and budgets.

(3) General administration of the contract, including substantiation of cost billings, payments to subconsultants, and documentation of claims.

(4) Cooperation shown by the firm in responding to requests for information and in revising procedures and products according to directions.

(5) Coordination exhibited by the firm in communicating with the department, subconsultants, agencies and others to accomplish tasks and resolve problems.

(6) Ingenuity displayed in solving unique and unusual design problems encountered during performance of contract objectives.

(7) The ability to obtain an acceptable end product with appropriate department staff guidance.

*b.* The evaluation may include a recommendation that the firm's prequalification be canceled (see paragraph 20.8(1) "h"). The firm shall be given an opportunity to review, comment on and sign the evaluation. The evaluation is confidential.

**20.8(11) *Conflicts with federal requirements.*** If any provision of this rule would cause a denial of federal funds or services or would otherwise be inconsistent with federal law, federal law shall be adhered to, but only to the extent necessary to prevent denial of the federal funds or services or to eliminate the inconsistency with federal law.